# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CRIMINAL REVISION APPLICATION No. 25 of 2005**
**With**
**CRIMINAL REVISION APPLICATION No. 26 of 2005**
**With**
**CRIMINAL REVISION APPLICATION No. 27 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE C.K.BUCH**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**MANSUKH LADHABHAI VASOYA - Applicant(s)**

**Versus**

**STATE OF GUJARAT - Respondent(s)**

==========

**Appearance :**
MR VIMAL M PATEL for Petitioner No(s).: 1.
Mr. NC Sood, Addl. PUBLIC PROSECUTOR for Respondent No(s).: 1.
==========

**CORAM : HONOURABLE MR.JUSTICE C.K.BUCH**

**Date : 22/08/2005**

**ORAL COMMON JUDGMENT** :

1. Heard ld. Counsel Mr. Vimal Patel for the petitioner accused in all the three Cri. Rev. Application and ld. APP Mr. NC Sood for respondent No.1 State.

2. It is submitted jointly that it is possible to hear and dispose of all the three Cri. Revision Applications by a common judgment because facts are same, relevant dates are also same and all the cases are based on a single incident which has taken place i.e. checking by Checking Squad of Electricity Board. Hence, Rule in all the three Cri. Rev. Applications. Ld. APP Mr. NC Sood appears and waives service of Rule for respondent State in all the three Cri. Rev. Application. On consent, Rule is fixed forthwith.

3. By filing Cri. Rev. Application No.25/2005, the petitioner accused has assailed the judgment and order dated 31.12.2004 passed by ld. Addl. Sessions Judge & Presiding Officer, 8th Fast Track Court, Gondal in Rev. Application No.56/2004 quashing and setting aside the judgment and order dated 31.03.2004 passed by ld. Chief Judicial Magistrate, Gondal below application exh.4 in Criminal Case No.2252/2003 discharging the petitioner accused Similarly, by filing Cri. Rev. Application No.26/2005, the petitioner accused has assailed the judgment and order dated 31.12.2004 passed by ld. Addl. Sessions Judge & Presiding Officer, 8th Fast Track Court, Gondal in Rev. Application No.57/2004 quashing and setting aside the judgment and order dated 31.03.2004 passed by ld. Chief Judicial Magistrate, Gondal below

application exh.4 in Criminal Case No.2253/2003 discharging the petitioner accused Similarly, by filing Cri. Rev. Application No.27/2005, the petitioner accused has assailed the judgment and order dated 31.12.2004 passed by ld. Addl. Sessions Judge & Presiding Officer, 8th Fast Track Court, Gondal in Rev. Application No.58/2004 quashing and setting aside the judgment and order dated 31.03.2004 passed by ld. Chief Judicial Magistrate, Gondal below application exh.4 in Criminal Case No.2254/2003 discharging the petitioner accused.

4. I have heard ld. Counsel appearing for the parties at length. Responsible officer from concerned police station is also present with relevant papers of investigation and he states that Shri GK Wala who has investigated the crime, has now retired and he is in charge of the case. As instructed, he is present in the Court with the statement of witness Jayaben who has been cited as prosecution witness in the chargesheet submitted by the police in connection with all the three criminal cases. On reading the said statement, I have found no incriminating material against the present petitioner. Three different prosecution are filed because in connection with three different electricity connection, theft of electricity was found as alleged by the Checking Squad. Undisputedly, the petitioner is

neither the owner nor the partner in the industry. At the relevant point of time, the petitioner was serving as Electrical Inspector and it appears that when checking squad of the Electricity Board reached the factory premises, the present petitioner was called and was present and he had some discussion with the officers of the checking squad and while Rojkam was drawn, he was present.

5. Even for the sake of arguments it is accepted that the petitioner was present and has disclosed his identity as Electrical Inspector serving in Rajkot District, he can not be held responsible for electricity theft merely because the factory is in the name of Jayaben, wife of the brother of the present petitioner. It appears that initially the real owner of the industry was the deceased brother of the present petitioner and after his death, major son of his deceased brother and wife Jayaben are looking after the industry and electricity connections are also in the name of respective family membrs concerned who run industry in the name and style of Chhaya Dyes. The ld. Chief Judicial Magistrate, after perusal of the papers of investigation and allegations made in the chargesheet, allowed the application exh.4 submitted by the petitioner in each case and vide

judgment and order dated 31.03.2004, discharged the petitioner accused in all the three criminal cases, by holding that there is no evidence worth the name in the papers of investigation on the basis of which the petitioner can be linked with the offence of theft of electricity.

6. The said order of ld. Chied Judicial Magistrate discharging the petitioner accused came to be challenged by the State by filing Cri. Rev. Applications and ld. Addl. Sessions Judge, vide impugned judgment and order dated 31.12.2004, allowed Cri. Rev. Applications and quashed and set aside the judgment and order passed by the ld.Chief Mudicial Magistrate. These very judgments/orders of ld. Addl. Sessions Judge are assailed in present group of Cri. Rev. Applications.

7. I have perused the impugned judgments of ld. Addl. Sessions Judge. On close scrutiny, the same is found erroneous. The ld. Addl. Sessions Judge, without examining the details and papers of investigation or chargesheet, has recorded that there is some prima facie evidence which can be said to be sufficient to frame the charge. There is no element of even strong suspicion. Merely because the present petitioner had visited on occasions the place where the factory is located or on

call by close relative like the deceased brother's wife had rushed to the site when Checking Squad visited, that can not be said to be a circumstance incriminating against the present petitioner for which a reasonable doubt can be raised. It is not even the say of the officers of the Electricity Board that the petitioner has attempted to influence them. He being technical man, might have tried to explain his point of view so that electricity bill that may be raised by the Board can be reduced to some extent. Of course, this aspect is also not emerging from the papers of investigation. Assuming for the sake of arguments that if such help was made by the present petitioner to his close relative, would not make him an accused of theft of electricity. Hence, the findings recorded by the ld. Sessions Judge are found erroneous and in exercise of revisional powers, he ought not to have disturbed the finding recorded by the ld. Chief Judicial Magistrate based on detailed discussion of facts. Such powers should be exercised by the revisional court only when it is found that the finding recorded by the lower Court is either perverse or illegal and based on improper appreciation of facts. Ld. Sessions Judge, ought to have rejected the Revision Applications saying that there is no illegality or

perversity in the order. Hence, the impugned judgment and order passed by ld. Addl. Sessions Judge is found erroneous and based on improper exercise of jurisdiction and, therefore, requires to be quashed and set aside, adopting the reasons assigned by the ld. Chief Judicial Magistrate for discharging the petitioner accused in all the three criminal cases.

8. In the result, all the three Cri. Revision Applications are hereby allowed. The impugned judgment and order dated 31.12.2004 passed by ld. Addl. Sessions Judge & Presiding Officer, 8th Fast Track Court, Gondal in Rev. Application No.56/2004 quashing and setting aside the judgment and order dated 31.03.2004 passed by ld. Chief Judicial Magistrate, Gondal below application exh.4 in Criminal Case No.2252/2003 discharging the petitioner accused, as well as the judgment and order dated 31.12.2004 passed by ld. Addl. Sessions Judge & Presiding Officer, 8th Fast Track Court, Gondal in Rev. Application No.57/2004 quashing and setting aside the judgment and order dated 31.03.2004 passed by ld. Chief Judicial Magistrate, Gondal below application exh.4 in Criminal Case No.2253/2003 discharging the petitioner accused and the judgment and order dated 31.12.2004 passed by ld. Addl. Sessions Judge & Presiding Officer, 8th Fast Track Court, Gondal in Rev. Application

No.58/2004 quashing and setting aside the judgment and order dated 31.03.2004 passed by ld. Chief Judicial Magistrate, Gondal below application exh.4 in Criminal Case No.2254/2003 discharging the petitioner accused, are hereby quashed and set aside and the judgment and order of discharge passed by ld. Chief Judicial Magistrate, Gondal below application exh.4 in Cri. Case Nos. 2252/2003, 2253/2003 and 2254/2003 is hereby restored and the petitioner accused is discharged from the offence in connection with aforesaid criminal cases.

9. Rule is made absolute in each Cri. Rev. Applications. Record & Proceedings be sent back to the trial Court so that the trial Court can proceed with the respective criminal cases against the rest of the accused persons.

(C.K. BUCH, J)

*rawal